(a) Designation

The President shall designate a Federal agency to serve as theCentral Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court . . . T.I.A.S. 10072; 33 U.S. Treaty Series (UST) 883; . . . .

Petitioner through his counsel turned in THREE different sets of Apostille Documents verifying Petitioner's detention in Mexico pursuant to The Hague convention.

On June 27, 2001 and on July 28, 2001 the District Judge had before him Apostille Documents verifying Petitioner's detention in Mexico and refused to accept these documents. Under the Hague Convention, the Court only had these choices. 1) Accept the documents as Judicial Notice; 2) Ask the Country of Mexico to verify that the documents are valid; 3) Ask the contracting government to interpret the meaning of the documents or 4) Declare the treaty to be unconstitutional. The District Judge by stating "The court is unmoved by Cohen's implausible and unsupported position that he is under house arrest in Mexico" disregarded the requirements of the treaty between the United States and Mexico and thereby disregarded the Supreme Law of the Land. U.S. Const. Article VI, cl. 2. [*5]

The Court is equally unfaithful to that command when it permits state courts to disregard the Nation's treaty

obligations. Alden v. Maine, 527 U.S. 706, 144 L. Ed. 2d 636, 119 S. Ct. 2240 (1999).

Under the Treaty (Hague Convention) each country is required to appoint "special persons" who have the signature power of their respective counties with respect to Apostille Documents. Only these people are authorized to grant Apostille documents. In the United States, only the "Secretary of State of the United States" and for each State their respective "Secretary of State" has this power and in Mexico only the "Subsecretario de Gobierno" has this power. Each government can only accept signatures from "duly appointed officials" when it relates to OFFICIAL documents and or PUBLIC DOCUMENTS.

The rationale and motive for the United States Government and for that matter every government that entered into the Hague Convention for authentication was so that *only* governments could verify, interpret and approve the validity of the documents passing between member countries. This way, each judicial officer knows that the documents presented are real and if necessary he can get an interpretation from the issuing judicial officer of the foreign state. But the District Judge unreasonably refused to engage in this process.

If not for the District Court's conduct, Petitioner's issues on his prior appeal would have more than likely resulted in reversal. On November 27, 2000, the District Court issued its summary adjudication ruling that "sex.com" is prohibited from being trademarked because it is GENERIC and has not obtained secondary meaning and therefore Petitioner had no rights. A trial would have resolved this issue.

The "Summary Adjudication" was based upon disputed facts that should have been tried before a jury. Petitioner has always defended the fact that he was the owner of the trademark rights to the name "sex.com" since 1979.

Had Petitioner's argument that Respondent Kremen lacked standing been determined by the panel, it is likely to have prevailed. It is inescapable that a consequence of such a ruling is the mooting of the conversion issue addressed in the Kremen NSI appeal because lack of standing would bar Kremen there as well.

The panel's decision to exercise its "discretion to dismiss the appeal pursuant to the fugitive disentitlement doctrine" based on *Paretti v. United States,* 143 F.3d 508, 510-11 (9th Cir. 1998) (en banc) is misguided. The facts here are not like those in *Paretti.* Petitioner was never a fugitive, was not a foreign national, did not have a pending criminal case and was only held in Mexico because he complied with the Court's order.

In sum, no rational basis exists for the panel's exercise of its discretion, and without any recitation of facts in support, its decision must be viewed as arbitrary, particularly in light of the facts expressed herein. Petitioner's Fifth Amendment right not to be deprived of property without due process of law has been violated. Moreover, guidance regarding how to treat the actions of an opposing party who acts to perpetuate the "fugitive" status about which he complains is necessary. Additionally, the specter of loss of international respect engendered by the district court's act of disregarding a foreign country's Apostille documents and mandating a violation of that country's laws to comply with its order must be carefully considered.

The District Judge's ruling that "sex.com" was not able to be trademarked was erroneous and most importantly the District Court now recognizes that fact in the Judge's current order.

CONCLUSION

The Fugitive Disentitlement Doctrine must be limited so that it doesn't apply to Petitioner and others who are held in custody in a foreign country for attempting to comply with a directive issued by the very court which imposed this ultimate sanction. Due Process under the Fifth Amendment requires no less.

Dated: July 22, 2005

Respectfully submitted,

STEPHEN MICHAEL COHEN
Petitioner in Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY KREMEN; et al., Plaintiffs-Appellees, v. OCEAN FUND INTERNATIONAL LTD., a foreign company; et al., Defendants, and STEPHEN MICHAEL COHEN, Defendant-Appellant.	No. 04-17214 D.C. No. CV-98-20718-JW Northern District of California, San Jose ORDER (Filed Mar. 24, 2005)

Before: KOZINSKI and McKEOWN, Circuit Judges, and FITZGERALD, District Judge.

Appellee's motion to have this case assigned to the panel that decided appellant's prior appeal, No. 01-15886, is granted.

Appellee's request to strike appellant's "Reply and Clarification in Response to Appellee [sic] Motion to Dismiss," filed on February 28, 2005, is granted. *See* Fed. R. App. P. 27. The February 28, 2005 filing is stricken.

Appellee's motion to dismiss this appeal under the fugitive disentitlement doctrine is granted. Appellant was a fugitive the last time he appealed, *see Kremen v.*

Cohen, No. 01-15886, 2002 WL 2017073 (9th Cir. Aug. 30, 2002) (unpublished memorandum disposition), is a fugitive now, and has demonstrated no likelihood that he will submit to the jurisdiction of the district court at any foreseeable point in the future. We therefore dismiss this appeal. *See Parretti v. United States*, 143 F.3d 508, 510-11 (9th Cir. 1998) (en banc).

Appellee's requests for sanctions and to identify appellant as a "vexatious litigant" are denied.

DISMISSED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY KREMEN; et al., Plaintiffs-Appellees, v. OCEAN FUND INTERNATIONAL LTD., a foreign company; et al., Defendants, and STEPHEN MICHAEL COHEN, Defendant-Appellant.	No. 04-17214 D.C. No. CV-98-20718-JW Northern District of California, San Jose ORDER (Filed Apr. 29, 2005)

Before: KOZINSKI and McKEOWN, Circuit Judges, and FITZGERALD, District Judge.

Appellant's "Petition for Rehearing or Rehearing En Banc" is denied. Judges Kozinski and McKeown reject the suggestion for rehearing en banc on behalf of the court. *See* 9th Cir. Gen. Ord. 6.11.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY KREMEN,

Plaintiff,

v.

STEPHEN MICHAEL COHEN,

Defendant. /

NO. C98-20718 JW
JUDGMENT

The Court hereby enters judgment in favor of Plaintiff Gary Kremen against Defendants, Stephen Michael Cohen, Ocean Fund Internacional Ltd., Ynata Ltd. and SandMan International, Ltd., jointly in the amount of $40,000,000, plus punitive damages in the sum of $25,000,000.00.

A constructive trust is imposed upon all monies and properties of the Defendants. The Receiver is ordered to collect and hold such properties pending further order of this Court.

The warrant of arrest issued on March 2, 2001 shall remain outstanding until defendant Stephen M. Cohen surrenders the property of each defendant to this Court.

Dated: April 3, 2001

/s/ James Ware
JAMES WARE
United States District Judge